

CITY OF BURIEN
WASHINGTON
ORDINANCE NO. 511

**AN ORDINANCE OF THE CITY OF BURIEN,
WASHINGTON, RELATING TO SPECIAL EVENTS;
ADDING A NEW CHAPTER TO TITLE 12;
ESTABLISHING REQUIREMENTS FOR OBTAINING A
SPECIAL EVENTS PERMIT; PROVIDING FOR
SEVERABILITY; AND ESTABLISHING AN EFFECTIVE
DATE**

WHEREAS, the City of Burien is host to many special events throughout the year; and

WHEREAS, the City Council recognizes the value of special events as it relates to the positive promotion of commerce and tourism within the City and the creation of unique venues for expression and entertainment that are not normally provided as part of governmental services; and

WHEREAS, the City Council also recognizes that special events may impact the operations of the City including the provisioning of its emergency services, safe travel upon the public rights of way, and the availability of use of public property including public parks and facilities; and

WHEREAS, the City Council finds that the City should have a comprehensive procedure for permitting of special events which: (1) establishes a process for the coordinated review and permitting of special events, (2) provides the City with the ability to monitor special events to make sure that any city department that may be affected has the opportunity to review and comment, (3) provides the City with the opportunity to review plans for special events to make sure that they are in compliance with the municipal code, (4) encourages responsible planning prior to the holding of special events, (5) provides adequate protection to residents, visitors and property owners who may be adversely effected by such special events, including, ensuring that special events do not create disturbances, become nuisances, menace or threaten life, health, and property, disrupt traffic or threaten or damage private or public property, (6) decreases any liability risk, (7) protects the rights and interests granted a special event permit holder, (8) establishes a mechanism for the City to be able to recover all or any part of the added costs incurred by the provision of additional or extraordinary support services, and (9) protects the rights of its residents and visitors to engage in protected free speech expression activities and yet allow for the least restrictive and reasonable, time, place and manner regulation of those activities within the overall context of rationally regulating special events that have an impact upon public facilities and services; and

WHEREAS, it is not the intent of the City Council to regulate in any manner the content of

speech or infringe upon the right to assemble, except for the time, place and manner of speech and assembly, and this ordinance should not be interpreted, nor construed otherwise; and

WHEREAS, the City Council finds that it is in the best interest of the public health, safety and welfare to adopt a new chapter relating to special events permitting; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Special Events Permitting Established. Title 12 of the Burien Municipal Code is hereby amended by the addition of new Chapter 12.15 to be known as Special Events Permitting Code to read as follows:

Section 2. Definitions.

“Activity” shall, for purposes of the definition of “special event”, mean and refer to any one or more of the following: outdoor athletic events, promotional or fund-raising events, weddings, block parties, socials, street dances, parades, marches, rallies, demonstrations, public assemblies, performances, exhibitions, entertainment or amusement events, farmers markets, public markets, craft fairs, parking lot sales, public street or public sidewalk sales, tent sales, displays, filming of movies, taping of video or television shows, fireworks displays, motorcades, motorized vehicle races or contests, soapbox derbies, rodeos, and tournaments.

“Building” means any fully enclosed permanent structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind. It includes push carts or sidewalk cafes for which the sale of goods, food, or beverages has been authorized.

“Demonstration” means a public display of group opinion as by a rally or march, the principal purpose of which is expressive activity.

“Departmental service charges” means the actual costs which a department of the city incurs in connection with activities for which a permit is required under this article, including, but not limited to, costs associated with fire safety, traffic and/or pedestrian control, water safety, the closure of streets or intersections, the diverting of traffic, the salaries of city personnel involved in administration or coordination of city services for the event, the cost to the city to provide support personnel, equipment, materials and supplies, and related city costs such as fringe benefits or employee overtime.

“Event Organizer” means any person who conducts, manages, promotes, presents, sponsors, organizes, aids, or solicits attendance at a special event.

“Expressive Activity” includes conduct, the sole or principal object of which is the expression, dissemination, or communication by verbal, visual, literary, or auditory means of

opinion, views, or ideas and for which no fee or donation is charged or required as a condition of participation in or attendance at such activity. For purposes of this chapter, expressive activity does not include activities for which the principal purpose is entertainment.

“Exhibition, Entertainment or Amusement events” shall have their ordinary meanings and shall include the following organized events: arts and craft shows, concerts, carnivals, circuses, fairs, shows, theatrical performances, musical performances, and festivals, including any exhibition involving amusement attractions or rides, spectacles, animals, side shows, games, and the like

“Extraordinary services” shall mean and refer to services above and beyond those routinely performed by the city police, fire and/or public works, and parks departments as a normal course of regular duty. Extraordinary services include but are not limited to those involving the closing of public streets, crowd control and security, and traffic control.

“March” means an organized walk or event whose principal purpose is expressive activity.

“Organized” in addition to its ordinary meaning shall mean, functioning within a formal structure, as in the coordination and direction of planned and controlled activities.

“Outdoor Athletic event” means an organized competitive or recreational activity in which a group of persons collectively engage in a sport or form of physical exercise that takes place in whole or in part outdoors including, by way of example and not limitation, team sports, tournaments, races, marathons, volksmarches and volkssports. Sport or form of physical exercise includes, by way of example and not limitation, bicycling, walking, running, sprinting, jogging, skateboarding, rollerblading and roller skating.

“Parade” means an organized group of persons, animals, bicycles, vehicles, carts, balloons, musical units and/or floats, or any combination thereof, travelling in public procession and having a common purpose, design, destination or goal, and the principal purpose of which is not expressive activity.

"Person" means any natural person, firm, association, joint venture, joint stock company, partnership, organization, club, company, corporation, business trust or manager, lessee, agent, servant, officer or employee or any of them, except where the context clearly requires a different meaning.

“Promotional or Fund-Raising Events” shall have their ordinary meanings and shall mean and refer to organized activities intended to promote causes, products, or services or raise funds primarily for charitable purposes, and shall include, by way of example and not limitation, bike-a-thons, walk-a-thons, and fun runs.

“Rally” means a gathering whose principal purpose is expressive activity, especially one intended to inspire enthusiasm for a cause.

Right-of-way” means, within the City of Burien, all public right-of-way and property granted or reserved for, or dedicated to, public use for street purposes, together with public property granted or reserved for, or dedicated to, public use for walkways, paths, trails, sidewalks, bikeways and horse trails, whether improved, unimproved, or unopened, including the air rights, sub-surface rights and easements related thereto, and over which the City of Burien has authority and control.

“Sidewalk” means that portion of a right-of-way, other than the roadway, set apart by curbs, barriers, markings, or other delineation for pedestrian travel.

“Sign” means any sign, pennant, flag, banner, inflatable display, or other attention-seeking device.

“Special event” shall mean any temporary organized activity sponsored by an event organizer which takes place, in whole or in part, outdoors, will result in people congregating at the event location for a particular and limited purpose and time, and meets any one or more of the following criteria:

(1) City Property. The activity will be conducted in whole or in part on city owned or controlled land that is not a City park or right-of-way;

(2) City Parks. The activity will be conducted within a City park or facility, as those terms are defined at Section 7.10.020 of the Burien Municipal Code as now or hereafter amended, and the parks director determines that the activity requires a special events permit because,

(a) The activity is likely to obstruct, delay or interfere with the free and normal use of public rights-of-way or other public property of the city within the vicinity of the event; or

(b) The activity is likely to result in the need for the City to provide extraordinary services in response to or arising out of the special event; or

(c) The activity will require exclusive use of all or a substantial portion of a City park.

Criteria to be considered include by way of example, and not limitation, available parking capacity in the vicinity of the special event, likely pedestrian and vehicular routes for travel to and from the special event, availability of public transportation, the number of days of the special event, the hours of the special

event, the number of people anticipated to attend the special event, the capacity and safety of the permanent and temporary structures intended to house the special event, the proximity and availability of health and sanitation services, the proximity and availability of emergency services, the activity(ies) to be engaged in as part of the special event, the historical impacts of the special event or comparable special events, if known, upon use of public rights of way and public property and public services including police and fire, and other similar considerations;

(3) Rights-of-Way. The activity will be conducted in whole or in part on city rights-of-way;

(4) Sales Not Already Permitted. The activity will involve the sale of merchandise, food or beverages outdoors where not already permitted by city code; whether by for profit or nonprofit organizations;

(5) Public Disturbance Noise. The activity will include use of sound amplification, public address, loud speaker, audio, video, or television systems or other devices likely to result in public disturbance noise in violation of Chapter 9.105 BMC as now or hereafter amended.

“Special event permit” means a permit issued under this chapter.

“Special event venue” means that area for which a special event permit has been issued.

“Tax-exempt nonprofit organization” means an organization that is exempted from payment of income taxes by federal or state law and has been in existence for a minimum of six months preceding the date of application for a special event permit.

“Vendor” means any person who sells or offers to sell any goods, food, or beverages within a special event venue.

Section 3. Special Event Permit Required/Purpose.

(1) Purpose. It is the purpose of the City to establish a process for permitting special events that impact City right-of-way, public property, other facilities or services. It is recognized that these special events enhance the Burien lifestyle and provide benefits to the citizens through the creation of venues for expression and entertainment that are not normally provided as a part of governmental services. By recognizing special event venues, it is further intended to supplement land use and street right-of-way regulations, to provide a coordinated process for the regulation of certain activities to be conducted in conjunction with special events, to ensure the health and safety of patrons of special events, to prohibit illegal activity from occurring within special event venues, and to protect the rights and interests granted to a special event permit

holder. It is further intended to create a mechanism for cost recovery without having an adverse effect on those events that contribute to the community. It is also the intent of the City to protect the rights of its citizens to engage in protected free speech expression activities and yet allow for the least restrictive and reasonable, time, place and manner regulation of those activities.

(2) Permit Required. Except as provided elsewhere in this chapter, an event organizer shall obtain a special event permit from the City Clerk for all special events.

(3) City Clerk. The City Clerk, in coordination with other involved City Departments and public agencies, is authorized to issue permits for special events occurring within the City limits, pursuant to the procedures established in this chapter and the rules and regulations promulgated by the City Manager. The City Clerk is authorized to determine the special event venue. The City Clerk shall set reasonable boundaries for the special event venue, balancing the special event requirements and public health, safety, and welfare. The City Clerk is authorized to coordinate the issuance of a special event permit with other public agencies through whose jurisdiction or property the special event or portion thereof occurs and to issue a special event permit upon the concurrence of other public agencies involved.

(4) Rules and Regulations. The City Manager is authorized to promulgate additional rules and regulations that are consistent with and that further the terms and requirements set forth within this chapter and the provisions of law that pertain to the conduct and operation of a special event.

Section 4. Exceptions To Special Event Permit Requirement.

A special event permit is not required for any of the following activities, provided that, the special event shall be conducted in accordance with all laws and regulations governing public safety or health:

- (1) Funeral Procession. Funeral processions by a licensed mortuary or funeral home;
- (2) Wedding processions. Wedding processions conducted on public rights-of-way wherein applicable traffic regulations, laws or controls are complied with;
- (3) School, Church & Governmental Events. Any special events held or conducted by or on behalf a public or private school, college or school district, the State of Washington or other governmental entity or any church that is legally operated in the city, so long as the activity or event is conducted on property owned, used, or leased by the entity or its sponsor and is for the benefit of the entity that owns, uses, or leased the property on which the activity takes place;
- (4) Expressive Activities on Sidewalks. Rallies, marches, demonstrations and picketing which take place on public sidewalks crossing streets only at pedestrian crosswalks in accordance with traffic regulations and controls and laws applicable to use of public sidewalks;

(5) Special Event Facilities. Events conducted at a facility designed for the special event purpose or upon facilities where such events are normally held, such as churches, events/convention centers, schools, athletic fields, auditoriums, stadiums, and theaters;

(6) Regularly Scheduled Athletic Events. Regularly scheduled outdoor athletic events conducted on property where such events are normally held.

(7) Outdoor Demonstrations on Public Property. Demonstrations on publicly owned property (other than public rights of way), unless,

(a) The activity is likely to obstruct, delay or interfere with the free and normal use of such public property or the public rights-of-way; or

(b) The activity is likely to result in the need for the City to provide extraordinary services in response to or arising out of the special event;

(8) Other Authorized Uses. Authorized uses of public property permitted by other provisions of the Burien Municipal Code; and

(9) Governmental Activities. Activities conducted by a governmental agency acting within the scope of its authority.

Section 5. Issuance Of A Special Event Permit Does Not Obligate City Services.

Issuance of a special event permit pursuant to this chapter does not obligate or require the City of Burien to provide City services, equipment, funding or personnel in support of a special event.

Section 6. Time For Filing Application For Special Event Permit.

(1) Except as provided at subsection 2 below, application for a special event permit shall be filed with the City Clerk not less than 45 calendar days, nor more than two years, before the time when it is proposed to conduct the special event. Upon good cause shown and provided that no risk or burden to the City ensues, the City Clerk has discretion to allow a later filing.

(2) Application for an expressive activity special event permit shall be filed with the City Clerk not less than seven calendar days, nor more than two years, before the time when it is proposed to conduct the expressive activity special event. Upon good cause shown and provided that no risk or burden to the City ensues, the City Clerk has discretion to allow a later filing.

(3) Except as otherwise provided herein, applications for a special event at City owned buildings and City parks shall be submitted to officials responsible for such buildings and

in accordance with such time limits and procedures as may be established for such buildings and parks and are not subject to the provisions of this chapter.

Section 7. When Application For Special Event Permit Is Deemed Complete.

An application for a special event permit is deemed completed when the applicant has provided all of the information required pursuant to the Special Event Permit Rules and Regulations.

Section 8. Date Of Special Event Not Confirmed Until Permit Issued.

Notwithstanding the City Clerk's acceptance of a completed application, no date shall be considered confirmed until a special event permit is issued.

Section 9. Special Event Permit Application.

The application for a special event permit shall be submitted and processed in accordance with the special permit rules and regulations promulgated by the City Manager.

Section 10. Denial Of A Special Event Permit Application; Appeals From Denial.

(1) If the City Clerk denies the application for the special event permit he or she shall notify the applicant in writing as soon as is reasonably practical.

(2) The denial of a special event permit may be appealed to the City Manager or his or her designee.

(3) An appeal shall be made in writing within five calendar days of the date of the written denial. An appeal is made by filing a written petition with the City Clerk, setting forth the grounds for appeal.

(4) The City Manager, or his or her designee, shall hear the appeal as soon as is reasonably practicable. The City Manager shall determine if the application was denied by the City Clerk based upon an error of fact or law and shall limit his/her review to the record before the City Clerk; provided that, the City Manager may, in his or her discretion allow submission of additional evidence relevant to the alleged error of fact or law.

Section 11. Display Of Special Event Permit Required.

A copy of the special event permit shall be displayed in the special event venue in the method prescribed by the City Clerk applicable to the particular special event and shall be exhibited upon demand of any City official.

Section 12. City Clerk's Action On Special Event Permit Application.

(1) Except as provided in Section 12 (2) & (6), the City Clerk shall endeavor to take final action upon a completed application for a special event permit within thirty (30) days of receipt of the completed application.

(2) The City Clerk is not required to take final action upon any special event permit application prior to 180 calendar days before the special event.

(3) The City Clerk is not required to take final action on an incomplete or untimely special event permit application.

(4) The City Clerk is not required to take final action upon two or more special event permit applications submitted by the same applicant unless two or more weeks shall have elapsed between the respective dates of submission of each.

(5) Final action on a completed special event permit application shall consist of one of the following:

(a) Issuance of a special event permit in accordance with the terms of the application; or

(b) Issuance of a special event permit in accordance with the terms of the application, as modified by mutual agreement between the City Clerk and the applicant; or

(c) Denial of the special event permit application by the City Clerk.

(6) The City Clerk shall take final action upon a timely completed application for an expressive activity special event permit as soon as reasonably practicable after receipt of a completed application, and in any event prior to the time set for the expressive activity special event.

Section 13. Insurance Required To Conduct Special Event.

The event organizer of a special event must possess or obtain insurance in the form and with coverages and limits as set forth in the Special Events Permit Rules and Regulations promulgated by the City Manager.

Section 14. Revocation Of Special Event Permit.

(1) Any special event permit issued pursuant to this chapter is subject to revocation pursuant to this Section 14.

(2) A special event permit may be revoked if the City Clerk, or his or her designee, or the Burien Police Chief, or his or her designee, or the City Manager, or his or her designee, determines:

(a) That the special event cannot be conducted without violating the standards or conditions for special event permit issuance; or

(b) The special event is being conducted in violation of any condition of the special event permit; or

(c) The special event poses a threat to health or safety; or

(d) The event organizer or any person associated with the special event has failed to obtain any other required permit; or

(e) The special event permit was issued in error or contrary to law.

(3) Except as provided in Section (4) below, notices of revocation shall be in writing and specifically set forth the reasons for the revocation.

(4) If there is an emergency requiring immediate revocation of a special event permit, the City Clerk, or responsible public official, may notify the permit holder verbally of the revocation.

(5) An appeal from a revocation shall be handled in the same manner and under the same time requirements as denials of special event permits, pursuant to Section 10.

(6) It shall be unlawful to operate a special event after revocation of a special event permit.

Section 15. Cost Recovery For Special Events.

(1) Except as otherwise provided in this chapter or when funded or waived by the City Council by resolution or ordinance, for any special event, the City Clerk shall impose a fee for departmental services charges.

(2) The City Clerk shall require payment of departmental service charges, based upon a reasonable estimate thereof, at the time the completed application is approved, unless the City Clerk for good cause extends time for payment.

(3) If the event organizer fails to clean the special event venue or route of the special event both during and upon completion of the special event and to return the area or route to the same condition of material preservation and cleanliness as existed prior to the special event, the

event organizer will be billed for actual City costs for cleanup and repair of the area or route occasioned by the special event. If the event organizer failed to comply with such requirements under a previously issued special event permit, the City Clerk may require the event organizer to deposit adequate surety in the form of cash or bond.

Section 16. Expressive Activity Special Event.

When a special event permit is sought for a demonstration, rally, or march, the following exceptions shall apply:

(1) Where the special event will not require temporary street closures, cost recovery shall be limited solely to a fee based on the administrative cost of processing the permit application.

(2) The insurance requirement shall be waived provided that the event organizer or an officer of the event organizer has filed with the application a verified statement that he or she intends the special event purpose to be First Amendment expression and the cost of obtaining insurance is financially burdensome and would constitute an unreasonable burden on the right of First Amendment expression. The verified statement shall include the name and address of one insurance broker or other source for insurance coverage contacted to determine premium rates for coverage.

(3) Where the special event will require temporary street closures and any one or more of the following conditions are met requiring the City to provide services in the interests of public health, safety, and welfare, the City Clerk may condition the issuance of the special event permit upon payment of costs incurred by the City to a maximum of \$500. Any fee schedule adopted by the City will contain a provision for waiver of or a sliding scale for payment of fees for city services, including police costs, on the basis of indigency, so that an indigent applicant's First Amendment rights are not impaired in any fashion due to wealth:

(a) The special event will substantially interrupt public transportation or other vehicular and pedestrian traffic in the area of its route, and/or

(b) The special event will cause an irresolvable conflict with construction or development in the public right-of-way or at a public park or public facility, and/or

(c) The special event will block traffic lanes or close right-of-way during peak commuter hours on weekdays between 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m. on right-of-way designated as arterials by the City's Public Works Department, and/or

(d) The special event will require the diversion of police employees from their normal duties, and/or

(e) The concentration of persons, animals, or vehicles will unduly interfere with the movement of police, fire, ambulance, and other emergency vehicles on the right-of-way, and/or

(f) The special event will substantially interfere with another special event for which a permit has already been granted or with the provision of City services in support of other scheduled special events, and/or

(g) The special event will have significant adverse impact upon residential or business access and traffic circulation in the same general venue.

(4) With regard to the permitting of expressive activity special events where the provisions in this section conflict with the provisions in any other section of this chapter, the provisions of this section shall prevail.

Section 17. Authorized Special Event Vendors.

(1) The issuance of a special event permit confers upon the permit holder or event organizer the right to control the sale of goods, food, and beverages within the special event venue in accordance with the terms and conditions of the special event permit. The permit holder may grant no greater rights or privileges to vendors than the rights or privileges granted to the permit holder pursuant to the special event permit.

(2) Vendors authorized to sell goods, food, or beverages in the special event venue shall display their authorization in the manner required by the City Manager. Only vendors displaying the required authorization shall be allowed to sell goods, food, or beverages in the Special Event Venue.

Section 18. Unlawful To Conduct Or Promote Attendance At Special Event Without Permit.

(1) It is unlawful for any person to conduct or manage a special event without a special event permit as required pursuant to this chapter.

(2) It is unlawful for any person during the 180 day period prior to a special event that will take place in whole or in part upon the right-of-way or City property, to promote any such special event prior to submittal of a special event permit application.

Section 19. Other Permits And Licenses.

The issuance of a special event permit does not relieve any person from the obligation to obtain any other permit or license required pursuant to the Burien Municipal Code or any other applicable law.

Section 20. Unlawful To Sell Goods In Special Event Venue Without Authorization.

It is unlawful for any person to sell, resell, or offer to sell or resell, any goods, food, or beverages in a special event venue, except:

1. From any building; or,
2. From any tent, booth, or temporary structure expressly authorized pursuant to a special event permit.

Section 21. Cost Recovery For Unlawful Special Event.

Whenever a special event is conducted without a special event permit, when one is required, or a special event is conducted in violation of the terms of an issued special event permit, the event organizer shall be responsible for, and the City shall charge the event organizer for, all City costs incurred for personnel and equipment for a public safety response caused or necessitated by the adverse impacts of the special event or the violation of the special event permit upon public safety.

Section 22. Violation; Penalties.

1. Violation of Sections 3(2), 14(6) or 18 of this Chapter is a misdemeanor punishable by a fine of up to \$1000 or by imprisonment for up to 90 days in jail, or by both such fine or imprisonment.
2. Violation of Section 11 and 20 of this Chapter is a Class I civil infraction and punishable by a maximum fine of \$250 for each such violation.

Section 23. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 24. Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force one hundred and twenty (120) days after adoption.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 11TH DAY OF MAY, 2009, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 11TH DAY OF MAY, 2009.

CITY OF BURIEN

/s/ Joan McGilton, Mayor

ATTEST/AUTHENTICATED:

/s/ Monica Lusk, City Clerk

Approved as to form:

/s/ Christopher Bacha

Kenyon Disend, PLLC

Interim City Attorney

Filed with the City Clerk: April 28, 2009

Passed by the City Council: May 11, 2009

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Date of Publication: May 14, 2009